



Housing, Communities and Local Government Committee

House of Commons, London SW1A 0AA

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The Rt Hon Robert Jenrick MP
Secretary of State
Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
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1 July 2020

Dear Robert,

RE: WESTFERRY PRINTWORKS

Thank you for your letter of 24 June regarding the decision to grant planning permission for the development at Westferry Printworks in the London Borough of Tower Hamlets. The Committee is grateful for the account given in your letter and the 129 pages of supplementary documentation that you provided. We note that this is most, but not all, of the information that was provided to the Cabinet Secretary.

While important gaps remain, your letter and these supplementary documents provide much needed clarity concerning your decision to grant planning permission. As I have repeatedly said, these matters are dealt with best when we have the facts in front of us, rather than on the basis of supposition and conjecture. Perceived conflicts of interest can be just as damaging as real conflicts to the integrity of the planning system and trust in our wider democratic process, which is why it is so vital that these matters are addressed as transparently as possible.

As I said in the House, and repeat again now, I am not accusing you, or any official in the Ministry, of deliberate wrongdoing. However, the documents do clearly demonstrate that serious mistakes were made during this process, and that these put into doubt your ability to act as a neutral arbiter in this case and created a strong perception of bias. You have accepted that your decision was unlawful on that basis.

The Committee respectfully disagrees with the Prime Minister's assertion that "the matter is closed" and believes that there are important lessons that must be learned. It is important for the Committee to scrutinise where it feels that greater transparency is needed within the planning system and to ensure confidence in the fairness of future planning decisions.

As is customary at the start of each Parliament, this Committee resolved not to scrutinise individual cases, including planning decisions, preferring instead to take a wider view of Government policy making. However, given the particular high-profile of this case and the opportunity to learn wider lessons, we feel it is important to make an exception and consider the rigour of the process without becoming the arbiter of the decision itself. The Committee also notes that the application stands to be redetermined and is, therefore, a live issue.

You have set out your reasons for approving the application in the Decision Letter (DL) of 14 January and in your correspondence of 24 June. The Committee considered the documents you provided during its private meetings on 26 and 29 June and seeks further clarity on some

of the issues raised by them.

Guidance on propriety

The Ministerial Code requires that there be “no actual or perceived conflicts of interest” in your decision making and I am sure you will accept that this is why most people have concerns around this case. The code also makes clear that ministers are expected to observe the Seven Principles of Public Life, the so-called Nolan Principles, setting out the need for integrity, accountability, openness and honesty from those in public office. Further, your department produces guidance on planning propriety (the guidance), specifically setting out advice for Ministers charged with making decision under planning legislation. The guidance clearly sets out requirements saying Ministers are *“under a duty to behave fairly in the decision-making process. They should therefore act and be seen to act fairly and even-handedly.”* It is clear the ultimate responsibility for ensuring the guidance is followed rests with Ministers.

The meeting and further contact with Mr Desmond

In your letter to the Committee you confirmed that it was matter of public record that you were seated on the same table as the applicant and his associates, Richard Martin and representatives from Mace, at a Conservative event in November of last year, during the General Election campaign.

The Committee is concerned by the process which allowed a Minister responsible for determining a major live planning application to be seated at the same table as the primary applicant.

1. What processes are in place to avoid such obvious conflicts of interest occurring?

Your letter further states that during this first meeting, Mr Desmond *“raised the application and has publicly said that he recalls showing me an extract of the scheme’s promotional video and says I watched it for a few moments before interrupting him. He also mentioned the impending adoption of the new Local Plan.”*

The guidance is clear on what action a Minister should take in circumstances where any party seeks to make representations during the stage of the process the application was at. Paragraph 11 clearly states that the party *“should be advised to write to the relevant official in the Planning Casework Division if the inquiry has concluded.”* Paragraph 12 also states that *“where representations are made by whatever means ... it should be made clear that they can only be taken into account if they can also be made available to all interested parties for comment.”*

2. Could you outline how these requirements were met in relation to any of the representations made by Mr Desmond, either during the dinner, or at any point afterwards?
3. What awareness of the application did you have ahead of the meeting with Mr Desmond on 18 November?

The Ministerial Code also sets out general requirements to avoid perceptions of bias including that *“if a Minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event. Departments will publish quarterly, details of Ministers’ external meetings.”* You state in your letter that it was nearly four weeks later that your department was informed, although you were making periodic visits to the department in the intervening period, and the meeting does not appear in the published list of Ministerial meetings for the period. The Guidance on

Planning Propriety states at paragraph 15 that *"in any case where a meeting is held, a note of the meeting should be kept. In some cases, this may need to be circulated to the interested parties."* This requirement is supplemented by general principles in the guidance that *"privately made representations should not be entertained unless other parties have been given the chance to consider them and comment."*

4. Why was the meeting not reported to the department at an earlier stage?
5. Can you provide a full note of the meeting or explain why it does not exist?
6. If a note does exist was consideration given to the need to circulate to other interested parties?
7. Why did you initiate further contact with Mr Desmond following the dinner, how did that come about and through which channels was contact made?
8. On 20 November, you texted Mr Desmond to explain that you were not able to discuss the planning application. Did your officials recommend that you cease contact? Were the rules unclear to you before this point?
9. Did you at any point seek advice on the Ministerial Code or other relevant guidance from your officials, including the Permanent Secretary?

In your letter you say that following your reappointment as Secretary of State after the General Election on 12 December 2019, you received advice on seven planning cases, seeking "further advice with respect to Westferry, given its complexity." *You go on to say that "I read the Inspector's Report and representations from parties, including a letter I had received from the Mayor of Tower Hamlets"*. Indeed, your decision letter of 14 January 2020 contains a list of representations which were received following the close of the inquiry, but it lists nothing after 1 November 2019.

10. Can you explain the apparent omissions from this list, including why none of the representations made to you by Mr Desmond are disclosed in the DL?
11. Can you provide details of all contact made by Mr Desmond with yourself or the department, through any means including telephone, after the 1 November 2019?

Timing and CIL

Your letter states that the developer should not be financially disadvantaged by the timing of decisions. You argued that it "would be against public law principles of natural justice and fairness for a public authority to benefit financially by deliberately slowing down planning applications".

12. Do you have any evidence that this was the reason why the London Borough of Tower Hamlets had delayed their planning decision?
13. What advice did you receive on the impact of the new CIL on the viability of the scheme, and when did you receive this advice?
14. What factors did you consider regarding the timing of the decision, aside from the introduction of the new local plan?

The decision

In a submission to you, officials considered that the proposal was not in accordance with development plan policies, advising that statute (Section 38(6) of the Planning and Compulsory Purchase Act 2004) requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Officials considered that there were no such material considerations. This was in line with the Inspector's Report. Despite this you decided that the overall provision of housing and employment opportunities in construction outweighed the requirements of the statute. The documents released leave several gaps which would aid our understanding of this issue.

15. Can you explain what evidence led you to come to this decision?

16. Is there any further information not yet disclosed relating to the advice received from officials about the weighting given to the various considerations in coming to your decision?

17. The planning application was for only 21% of the flats to be affordable homes, considerably lower than the 35% upper target in the London Borough of Tower Hamlets Housing Delivery Strategy. Why was this acceptable to you?

18. You said that the heritage impacts, such as on the views of the Old Royal Naval College, Greenwich, were outweighed by the benefits of the scheme. Could you elaborate on your reasons for coming to this view against the advice not only of the Inspector but of your own officials?

19. What consideration did you give to the previous lengthy delays in the applications relating to this site in coming to your decision?

In May, the Planning Court approved a consent order quashing your decision after you accepted, in response to a claim issued by the Council under section 288 of the Town and Country Planning Act 1990, that the timing of the decision would lead the "fair-minded and informed observer" to conclude that there was a "real possibility" that you were biased in favour of the developer in granting planning permission.

20. What advice were you given by officials in response to the claim and ahead of the decision to quash the decision?

21. What issues were considered likely to give rise to apparent bias?

In your letter you state that in the last three years, 14 substantive decisions have been made by Ministers in disagreement with the recommendation of the Inspector.

22. Do you have an equivalent figure for where a minister has decided in disagreement with the recommendation of the Inspector and in disagreement with the recommendation of officials?

23. To what extent did you take into account the opposition to the proposed scheme from all political groups on Tower Hamlets council, the greater London Authority and the Planning Inspectorate in your decision?

24. Did the Prime Minister, or anyone else from the Prime Minister's office, ever discuss this planning application with you?

25. Did you receive representations from any other government department, or stakeholder, that has not yet been disclosed?

26. Are there any further documents that were sent to the Cabinet Secretary that have not been disclosed to the Committee that can now be disclosed, or a list outlining the nature of those documents?

Review of the Guidance

You rightly state that *"all decision makers in the planning process receive unsolicited representations from time to time. It would be perverse if any decision maker was barred from taking a decision because of unsolicited representations."* However, the guidance sets out many requirements with the warning that a challenge will succeed if a court is satisfied that Planning Ministers have acted procedurally unfairly – for example by *"giving a developer an opportunity to put forward his case which has not been granted to other interested parties."* Many of the requirements address this to ensure the level of transparency necessary to guard against perceived or actual bias.

As you note in your letter, this episode raises important questions concerning the Planning Propriety Guidance and whether there should be clearer, practical guidance to Ministers and civil servants. However, as the guidance itself states, *"no set of principles or guidance is a substitute for common sense."* While there may be unnecessary ambiguity in some aspects of the guidance, other elements are clear, concise and correct. The Committee will make recommendations in this respect at an appropriate point in the future.

The Committee notes the problems of delays within the system highlighted in your letter. However, the need to reduce delays should be balanced against the need to ensure the retention of the necessary protections afforded by the planning system. These issues may be considered further by the Committee, in light of future government announcements.

I would be grateful if you could respond to this letter, answering each question in turn, by Monday 6 July. The Committee has already invited you to give public evidence session on Monday 13 July, when there will be a further opportunity to discuss these issues.

A handwritten signature in black ink, appearing to read 'Clive Betts', with a stylized flourish above the name.

Clive Betts MP
Chair, Housing, Communities and Local Government Committee